



October 18, 1999

Mr. Keith Stretcher
City Attorney
City of Midland
300 N. Loraine, Room 320
Midland, Texas 78702-1152

OR99-2950

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129638.

The City of Midland (the "city") received a request for a copy of a police report from an incident reported on September 12, 1999. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You assert that the investigation related to this file did not result in a conviction or deferred adjudication. After reviewing the records at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) with regard to the requested incident report and that most of the information contained in the report therefore may be withheld.

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536

S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

You claim that some of the basic information should not be released pursuant to the informer's privilege under section 552.101.¹ *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege does not categorically protect from release the identification and description of a complainant, which is front page offense report information generally considered public by *Houston Chronicle*. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).² The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976).

Based upon the information provided to this office, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the complainant's identity. Consequently, we conclude that the city must release the relevant front-page report information. We note that the complainant's telephone number and address are generally not front page offense report information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

²The informer's privilege protects from disclosure the identity of an informant, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978).

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 129638

Encl. Submitted documents

cc: Mr. John Chavez
1008 W. Missouri Avenue
Midland, Texas 79701
(w/o enclosures)